

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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|---------------------------|---|---------------|
| JOHNATHAN C. LARGE, |) | |
| a/k/a JONATHAN C. LARGE, |) | |
| Petitioner, |) | |
| |) | |
| |) | CIV-13-1003-F |
| v. |) | |
| |) | |
| KAMERON HARVANEK, Warden, |) | |
| |) | |
| Respondent. |) | |

SUPPLEMENTAL REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, has filed this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. §636(b)(1)(B).

In his Amended Petition filed herein (Doc. # 42), Petitioner asserts that his conviction for Indecent Exposure entered in the District Court of Beckham County, Oklahoma, Case No. CF-2010-356, is void because he should have been convicted and sentenced for a municipal offense, rather than a felony offense.¹ The allegations in the four grounds for relief may also

¹Public records of the Oklahoma Court of Criminal Appeals indicate Petitioner has a pending appeal in that court of the District Court of Beckham County's revocation of his probationary sentence in Case No. 2010-356. <http://www.oscn.net/applications/oscn/GetCaseInformation.asp?submitted=true&viewtype=caseGeneral&casemasterID=111573&db=Appellate> (docket sheet last accessed November 19, 2013).

be generously construed to assert that there was insufficient evidence to support his felony conviction.

The instant action is duplicative of a previous 28 U.S.C. § 2254 action Petitioner has filed in this Court. In Johnathan C. Large v. Oklahoma Dept. of Corrections, Case No. CIV-13-961-F, Petitioner has asserted a challenge to the same conviction and sentence under 28 U.S.C. § 2254. In fact, in Case No. CIV-13-961-F Petitioner has filed essentially the same amended petition on October 15, 2013, that he filed herein on October 15, 2013.

“[G]enerally, a suit is duplicative if the claims, parties, and available relief do not significantly differ between the two actions.” Serlin v. Arthur Anderson & Co., 3 F.3d 221, 223 (7th Cir. 1993)(internal quotations and citations omitted). “A district court, as part of its general power to administer its docket, ‘may stay or dismiss a case that is duplicative of another federal court suit.’” Veitia Piedra v. Aquirre, 125 Fed. Appx. 968, 969 (10th Cir. 2005)(unpublished op.)(quoting Curtis v. Citibank, N.A., 226 F.3d 133, 138 (2d. Cir. 2000)).

The Court is not required to address a duplicative action. See Davis v. Bacon, 234 Fed. Appx. 872, 874 (10th Cir. 2007)(unpublished op.)(affirming dismissal of action as frivolous which “substantially mirrors the prior complaint”); Carter v. Jones, 228 Fed. Appx. 812 (10th Cir. 2007)(unpublished op.)(affirming dismissal with prejudice of § 2241 habeas petition found to be duplicative of previously-filed and still-outstanding § 2241 petition). Accordingly, the instant Petition should be dismissed with prejudice on the ground that it is duplicative of a previous 28 U.S.C. § 2254 action filed by Petitioner in this Court challenging the same conviction and sentence.

RECOMMENDATION

Based on the foregoing findings, it is recommended that the 28 U.S.C. § 2254 Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 be DISMISSED with prejudice. Petitioner is advised of his right to file an objection to this Supplemental Report and Recommendation with the Clerk of this Court by December 10th, 2013, in accordance with 28 U.S.C. § 636 and Fed. R. Civ. P. 72. The failure to timely object to this Supplemental Report and Recommendation would waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendations are deemed waived.”).

This Supplemental Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter. All pending motions (including Docs. # 3, 4, 17-24, 26-28, 30, 31, 33, 35-41, and 43) are denied.

ENTERED this 20th day of November, 2013.


GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE